

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON HIGHWAYS AND TRANSPORTATION

Call to Order: By Chairman Stang, on January 19, 1989, at 3:00 p.m.

#### ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon, Researcher  
Claudia Johnson, secretary

Announcements/Discussion: None

#### HEARING ON HOUSE JOINT RESOLUTION 17

#### Presentation and Opening Statement by Sponsor:

Rep. Ted Schye, House District 18, gave a short presentation on the joint resolution of the Senate and the House of Representatives of the state of Montana requesting the secretary of transportation to ask congress for funds necessary to continue the essential air service program for Montana. Rep. Schye asked the Committee to consider this bill, because the funds have been withdrawn and will have a large impact on the communities in the eastern part of the state. Rep. Schye stated that he has written a draft form if the Committee decides they want to go with this bill. He stated that in 1978 Congress enacted the Airline Deregulation Act which guaranteed that small communities would continue receiving air service for a period of ten years. Eight small Montana communities have received subsidies under the provision of this program. The scheduled airline service to these communities have been a life-line to the state and the national transportation system. He stated that in 1987, Congress demonstrated a strong bipartisan commitment for essential air service to the communities by extending the program for an additional ten years. Rep. Schye stated that seven of these small Montana communities will lose their subsidized air service and will suffer a devastating impact if the Dept. of Transportation eliminates the funds to support the air service. The Dept. wants to adopt the rules to go into affect March 1, 1989. Rep. Schye gave a list of the

communities that would be affected; Glasgow, Glendive, Havre, Lewistown, Miles City, Sidney, West Yellowstone and Wolf Point. Rep. Schye stated that if Montana lost this subsidy for essential air service, the stated will lose Big Sky air service. Rep. Schye asked the Committee to accept this draft and would be willing to work with Paul Verdon, the Committee researcher on the draft. Rep. Schye commented that this bill has been extended in Congress, so there would be enough time to get this bill through the House and Senate and sent to Congress.

Testifying Proponents and Who They Represent:

None

Proponent Testimony:

None

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Rep. Schye closed.

DISPOSITION OF HJR 17

Motion: Rep. Bachini moved to approve this resolution to keep air service in eastern Montana.

Discussion: Rep. Zook stated that this is very essential for Montana and that he is certainly in favor of the Committee to put this to a vote.

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously to DO PASS.

HEARING ON HOUSE BILL 158

Presentation and Opening Statement by Sponsor:

Rep. Addy, House District 94, opened by stating this bill is attempting to address a problem that has been in Montana as long as there has been rest areas, and that is how to maintain them. Rep. Addy stated that anyone stopping at a rest area for the first time in Montana would get the

impression of what this state is like. Rep. Addy stated that the Dept. of Highways has contracted the maintenance of the rest areas in the past and has not been able to address specific duties in nor require the number days the contractor should work on the rest areas because he would then would be an employee. Rep. Addy stated that the state has an opportunity to provide a service to these people that stop in by providing pay phones, vending machines and information service. Rep. Addy stated he understood the Dept. of Highways has been discussing this concept with the contractors and hoped they could modify the itinerary by providing information for alternative destinations, reservations, and etc. Rep. Addy stated that some of the smaller towns near the rest areas could also provide information of places of interest, e.g., Museum of the Rockies, etc. Rep. Addy stated that the economic advantage of more people to help maintain the rest areas in a superior fashion would be to the advantage of Montana. The whole purpose of the bill is to slow people down and possibly get them to spend an extra day in Montana.

Testifying Proponents and Who They Represent:

Ben Havdahl, Montana Motors Carriers Assoc.

Proponent Testimony:

Mr. Havdahl stated he would like to go on record in support of HB 158. Mr. Havdahl stated that over the road truck drivers are required by regulations, established by Dept. of Transportation, to shut down their operation after ten continuous hours and rest for eight hours, and the rest areas are ideal places for this. Mr. Havdahl stated telephones are vital to these truck drivers to receive information from their companies, etc. Mr. Havdahl stated that vending machines would also play an important part to the truck drivers that are shut down. Mr. Havdahl offered an amendment to the bill stating on line 16 following "public telephones", he wanted to add "with amplified handsets".

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Jess Munro, acting director of the Dept. of Highways, stated that they do not have a stand on the bill, but do have some pros and cons that he would like for the Committee to consider. Mr. Munro felt it does have merit by allowing a traveler to stop and have a snack. Mr. Munro stated the

availability to have telephone service at the rest areas would allow them to make reservations, alter their plans, etc. Mr. Munro stated they have two problems with the bill; 1) Vandalism; being in an isolated area gives the opportunity to those that would do this. 2) Vending machines; Mr. Munro stated this has been an ongoing problem with truck stops and local stores at interchanges because it is competition. Mr. Munro stated that under these rules, he thought the Dept. of Highways could handle the bidding and the purchasing of the items needed, but the Dept. is required under law, the federal Randolph Shepherd Act, to offer the contract to blind vendors, and stated the need for the Committee to keep that in mind as they pursue this bill. Mr. Munro stated that the policy in the past is that the rest areas are merely quick stops, but stated that the dept. would be willing to change.

Questions From Committee Members: Rep. Aafedt asked Rep. Addy if the Highway Commission now services the rest areas? Rep. Addy replied that the Dept. of Highways does so through independent contractors. Rep. Addy stated there is independent legislation in that it would make these independent contractors employees, and then it would require them to be there from 8:00 a.m. until 4:00 p.m., but if that happened, it would destroy the independent contractor's status.

Rep. Nelson asked Rep. Addy if the independent contractors had thought of vandalism and what it would do? Rep. Addy replied that there is vandalism now, and it would increase with more machines there. He stated if those employees were there everyday it would curb vandalism.

Rep. Roth asked Rep. Addy what would be the cost of installing telephones or would the Dept. of Highways take care of it? Rep. Addy stated that by giving the dept. authority to make rules, they would be able to negotiate that with private sources.

Rep. Roth asked Rep. Addy if he had contacted the various vendors of Pepsi, Coca Cola, U.S. West, etc., if they were willing to risk the vandalism that would take place? Rep. Addy commented that there were discussions with vendors and they were willing to take that risk. He also stated that there was the chance that the state would receive 30 percent of the gross from the people that operate that type of service.

Rep. Roth asked Mr. Munro if the vendors were interested in doing this type of business? Mr. Munro stated that Mr. Wicks had talked with these people and that they were interested. Mr. Munro wanted to clarify that if they did go with the blind vendors, they cannot charge them money because of the Randolph Shepherd Act. Beate Galda, Attorney for Dept. of Highways, replied in answer to Rep. Roth's comment that under the RSA, they would have to offer this to the blind

vendors first, and then it is administered through the SRS, but if they do not receive any bids from a blind vendor, then they could make other arrangements. Ms. Galda stated that if a blind vendor does go with it, all they can charge them is rent, electricity and the basic things.

Rep. Clark asked Mr. Munro if the dept. has experimented with this before in the state of Montana? Mr. Munro replied not to his knowledge. Rep. Clark then asked Mr. Munro regarding vandalism, if he knew of other states that had vending machines and how they handled vandalism? Ms. Galda answered that the only state she was aware of was Washington where they put their vending machines in cages or recessed them into walls, etc.

Rep. Campbell asked Mr. Munro if the bids would be let on a statewide basis? Mr. Munro stated that it would be.

Rep. Zook asked Mr. Munro if they had looked into a closed facility at the major rest areas for a concessionaire type of arrangement? Mr. Munro stated there would be quite a cost for that. Rep. Zook directed the same question to Rep. Addy who replied that there are strict limitations on what you can do at rest areas because of the people that live in towns close by do not want them to turn into little villages.

Rep. Campbell directed a question to Tom McGree, representing U.S. West Telephone Company, about how they handle the telephones in rest areas in other states? Mr. McGree replied that when they install a public coin telephone, which means to them that there is not a construction charge associated with the installation, because it would be for emergency use, etc. Mr. McGree stated that the phones in other states and in some areas in Montana are changeless, they have to call collect or use a credit card.

Rep. Stang asked Rep. Kelly if he knew how many other states do this with vending machines, etc.? Rep. Addy answered stating the farther east you go there are a lot of them, and also west of us. Rep. Stang went on to say that a lot of the rest areas are next to a community and asked Rep. Addy if he would accept an amendment that would limit this to rest areas that are within 25 miles of an existing town? Rep. Addy stated that he did not feel that would be the right thing to do.

Closing by Sponsor: Rep. Addy closed by stating that Montana would benefit by this bill and needs to do something with the maintaining of the rest areas to: 1) Make them more attractive, and 2) for the people passing through to be more aware of our state and maybe stay an extra day or two and hoped the Committee would respond with a do pass.

Presentation and Opening Statement by Sponsor:

Rep. Ellison, House District 81, stated that HB 165 does the same for off road vehicle as the bill that Legislature passed several sessions ago for snowmobiles. Rep. Ellison stated that there are a number of provisions in the bill at the present time to register and license off road vehicles: 1) it would register dealers that are not registered at this time, 2) to provide an account to earmark revenue that would grant the FWP to place these vehicles on public land, and 3) to contribute a portion of that money to go toward the development of trail facilities for these people. Rep. Ellison stated there are some glitches in this bill regarding the Dept. of FWP and the Dept. of Justice, due to some changes that would make the bill hard to read and stated he wished to ask the Committee to consider if they wanted to place this bill into a subcommittee to construct a gray bill that would make it easier to read.

Testifying Proponents and Who They Represent:

Linda Ellison, Secretary/Treasurer, Mt. Trail Bike Riders  
Robert Lee, President Mt. Trail Bike Assoc.  
Dick Johnson, Fish Wildlife and Parks  
Doug Abelin, Cut Bank  
Ken Hoovestol, Mt. Snowmobile Assoc.  
Bob Robertson, Dept. of Justice  
Dave Cohen, Trail Bike Riders Assoc.  
Larry Ellison, Trail BIke Riders Assoc.  
Dennis Miller, Sec. of Trail Bike Riders Assoc.

Proponent Testimony:

Ms. Ellison distribute a handout on a summary of the fees that have been placed together. See Exhibit 1. Ms. Ellison stated this bill is a culmination of a great deal of effort toward fulfillment of promoting family oriented recreation and sound land stewardship. She stated that 90 percent of OHV use occurs on public land in Montana, primarily Forest Service and BLM, and that deficiencies in funds have resulted in insufficient maintenance of trails for OHR. See Exhibit 2.

Mr. Lee stated that he wanted to clarify what the OHV program does, and stated that they have studied the programs of other states. Mr. Lee stated the program is funded by the user, not through taxes of general funds from other areas. Mr. Lee stated the dominant fund raising source is a direct tax or fee applied toward the user. He stated there are 6 other states that use the following: 1) funding source, 2) enforcement provided, 3) entitlement provisions, and 4) a program which the users are looking for, in this case, trails, etc. He stated that other states which have been researched and have this in place at this time are Oregon,

California, Utah, Idaho, Washington, Michigan and Colorado who has just started. See Exhibit 3.

Dick Johnson stated that FWP supports HB 165, but would like to see the bill assigned to a subcommittee to make proper adjustments. Mr. Johnson stated that the funding from these programs would allow the dept. to develop and implement the programs. See Exhibit 4.

Doug Abelin stated that he would like to think that all the work they have done on the trails all these years would give them credit now if this bill was legitimate.

Ken Hoovestol stated that the snowmobile assoc. is in support of HB 165. Mr. Hoovestol stated the concept of this bill is patterned after the snowmobile law and has worked very well for them. the main reason they are interested in this bill, is for the funding purposes and thought if they worked together they could share those funds for better trails.

Bob Robertson stated that he is not a proponent nor an opponent, but stated that he does have a number of technical amendments that would better coordinate the treasurer's office with the registrar's office and the registration and decals.

Dave Cohen stated he is in support of this bill.

Larry Ellison went on record in support of this bill.

Dennis Miller stated that he is in favor of this bill.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Patterson asked Rep. Ellison if it would be possible to add on a fifty cent fee for OHV for noxious weed program? Rep. Ellison stated he felt it would be a good idea.

Rep. Roth asked Rep. Ellison if there was a situation for law enforcement, would the FWP handle it through this program? Rep. Ellison stated there is a section in the bill that sets out part of the money for law enforcement.

Rep. Zook asked Rep. Ellison if ranchers that use these vehicles are charged property tax? Rep. Ellison replied that they do pay a fee in lieu of tax, he also stated that ranches are not affected by this bill, that they can use them for irrigation purposes, etc. and if they had BLM land it could

also be used for work purposes. Rep. Ellison stated that this bill is for recreational purposes only.

Rep. Clark asked Rep. Ellison about the \$4 fee that goes to FWP for enforcement and wanted to know how other agencies would get part of that fund if they were enforcing the law? Rep. Ellison replied that FWP was the main agency, but other agencies could do it by calling FWP.

Closing by Sponsor: Rep. Ellison closed by mentioning he had met with Dept. of FWP and Dept. of Justice and Trail Riders assoc. and they came to a consensus that if the Committee was so inclined they would present a gray bill that will have all the changes included within.

#### HEARING ON HOUSE BILL 164

#### Presentation and Opening Statement by Sponsor:

Rep. Clark, House District 31, stated this bill is being requested by the Dept. of Justice and it would amend sec. 61-9-405 Mont. Codes Annotated. Rep. Clark stated there is new language for the wording "which obstructs" and the new wording means that anything that is obstruction which hinders the drivers clear view of the highways.

#### Testifying Proponents and Who They Represent:

Peter Funk, Assist. to Attorney General, Helena

#### Proponent Testimony:

Mr. Funk stated that in the current language, without the word "obstruction" the statute provides that no person shall drive any motor vehicle with signs, posters or non transparent material. Mr. Funk stated that the MHP under this statute is involved especially with accidents in the winter time. If obstruction of view is the cause, unless it is a sign, poster or other non transparent material, a citation cannot be issued under the current statute. Mr. Funk stated that in Montana a common cause of accidents in the winter time is from windows not being clear, and the vehicle should not have been driven until the windows were cleared.

#### Testifying Opponents and Who They Represent:

None

Questions From Committee Members: Rep. Bachini asked Mr. Funk if under this bill, if his windows were iced up and not involved in an accident, could he be cited for that reason? Mr. Funk replied that he could be, just for having iced windows.

Rep. Aafedt asked Mr. Funk what defines the meaning of the word obstruction, e.g., a 20 day sticker in the rear window? Mr. Funk replied that under this bill it would be up to the officer on the scene, but felt that if a citation was given there would probably never be a conviction. Mr. Funk stated this bill does give the officer on the scene a lot of discretion.

Closing by Sponsor: Rep. Clark closed by stating the word "hinder" is the key to this statute. Rep. Clark stated he would like to address an amendment for "hanging from or attached to the rear view mirror" to be inserted on line 15.

#### HEARING ON HOUSE BILL 149

#### Presentation and Opening Statement by Sponsor:

Rep. Stang, House District 52, stated he was sponsoring the bill on request from the Dept. of Highways. Rep. Stang stated this bill amends the current statutes to eliminate the requirement that an original owner who has interest in the property, has absolute right to repurchase that property being offered for sale by the dept. of Highways. Rep. Stang stated this bill would require the dept. to notify the original owner from whom the property was acquired by the dept. If the owner wanted to acquire the excess property, he could then bid on it, but would not be able to purchase the property unless he had the highest bid. Rep. Stang stated it would make it less complicated for the dept. to dispose of the land.

#### Testifying Proponents and Who They Represent:

Beate Galda, Attorney for Dept. of Highways

#### Proponent Testimony:

Ms. Galda stated this law has been in effect since 1959, and provides option for the original owner or successor in interest to require the dept. to sell land at public auction rather than be able to exchange it for other land. It also provides an option to match the high bid. Ms. Galda stated since 1959, the dept. has estimated that less than 10 former owners were successor in interest have exercised their option to meet the high bid. Ms. Galda stated that since that period of time, the dept. has sold 350 parcels of land. She stated the dept. sells or trades an average of 10 to 15 parcels of land per year. She stated that normally this land is not of use to the owner because of being too small or might be separated from the rest of the property. Ms. Galda stated the purpose of this bill allows dept. to purchase from current owner without having to go back to original owner and the original owner will not be notified of the sale of a

right-of-way. See Exhibit 5.

Testifying Opponents and Who They Represent:

Jerry Jack, Stockgrowers Assoc., and Mt. Cattleman's Assoc.

Opponent Testimony: Mr. Jack stated their concern is from a rural standpoint to repurchase from the Dept. of Highways. Mr. Jack felt that the opportunity should be given to the land owners to buy back the land that is not needed because they might not be competitively able to bid. Mr. Jack felt the bill should be amended to give the rural land owners the opportunity to buy those lands back and urged a do not pass.

Questions From Committee Members: Rep. Aafedt asked if the change of statute would have any affect on a right-of-way that has been abandoned from the use it had been taken for? Ms. Galda replied that it does not affect abandoned property and would go to the adjacent land owner.

Rep. Roth asked Mr. Jack if it were his intentions to have his people buy it back lower then the highest bid? Mr. Jack stated it was the opportunity to buy it back.

Rep. Zook asked Ms. Galda if the land is taken from the owner who determines who or what determines the settlement of monies? Ms. Galda replied that it determines how it is settled, by a jury trial or filed by eminent domain then the parties determine the settlement.

Closing by Sponsor: Chairman Stang closed by stating there are two things to remember: 1) The original owner had been paid for that property, and 2) that land had been in use for some time by the dept. before selling it, the farmer or rancher has had to work around it anyway.

EXECUTIVE SESSION

DISPOSITION OF HOUSE BILL 110

Motion: Rep. Linda Nelson moved a DO PASS on HB 110 to make motor homes that are being delivered to a dealer or distributor to be stopped by the Dept. of Highways to pay a \$10 trip permit and if diesel they would pay a fuel bond.

Discussion: None

Amendments, Discussion, and Votes: Rep. Roth moved to adopt the amendment that allows the Dept. of Highways to stop motor homes in transit to be delivered to dealers and distributors to pay a \$10 trip permit and if diesel they would pay a fuel bond.

Rep. Stepler called the question. All Committee Members voting

aye for a DO PASS on the amendment.

Recommendation and Vote: Rep. Roth moved for a do pass as amended. Question was called. The motion CARRIED unanimously to DO PASS AS AMENDED.

DISPOSITION OF HOUSE BILL 131

Motion: Rep. Bachini moved a DO NOT PASS to reduce the penalty of the seat belt law from \$20 to \$10.

Discussion: None

Amendments, Discussion, and Votes:

Recommendation and Vote: Rep. Davis called the question. The motion CARRIED to DO NOT PASS. Rep. Stepler, Rep. Nelson, Rep. Patterson and Rep. Zook voted no.

DISPOSITION OF HOUSE BILL 165

Motion: A motion was made so Paul Verdon, the Committee researcher, could coordinate with the sponsor to create a gray bill to make the bill easier to read.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: Question was called. The motion CARRIED unanimously to DO PASS.

There being no further business the Committee was adjourned.

ADJOURNMENT

Adjournment At: 5:00 p.m.

  
\_\_\_\_\_  
REP. Barry Stang, Chairman

BS/cj

1606.min





SUMMARY OF INTENT  
FOR  
PROPOSED OFF-HIGHWAY VEHICLE ACT

To provide for a redirection of fees, enabling the act to pay its own way administratively.

To bring the fee in lieu of tax in line with differences in value between snowmobiles and OHV's.

To provide for registration of OFF-HIGHWAY vehicle dealers.

To provide for issuing a certificate of ownership for OHV's and a beneficial registration system.

To provide that the decal portion of the fees also be paid by licensed OHV's used on public lands.

To provide an OHV program that is paid for by the people it provides services for.

EXHIBIT 2  
DATE 1-19-89  
HB 165

Comments Re: HB 165  
House Highways and Transportation  
Committee  
January 19, 1989

Linda Ellison, Secretary/Treasurer,  
Montana Trail Bike Riders Assn.  
(Proponent)

Montana Trail Bike Riders Assn. is a statewide association of individuals, families, off-highway vehicle dealers, and OHV recreation clubs, organized for the purpose of retaining OHV recreational opportunities and promoting family oriented recreation and sound land stewardship.

This bill is a culmination of a great deal of effort toward fulfillment of that purpose.

90% of OHV recreational use occurs on public land in Montana, primarily Forest Service and BLM, and it is our feeling that planning for motorized trail use suffers from a piecemeal approach. Planning for motorized recreation is done by 11 individual National Forests, 3 BLM districts, by the Department of State Lands, and by the Parks division of the Montana Department of Fish, Wildlife, and Parks-- all as individual entities, without regard for the overall picture.

Deficiencies in funding have resulted in insufficient maintenance and spotty inventory and use data for all of the involved agencies, along with other barriers to responsive management.

At the same time, there has been a significant rise in all forms of trail use in Montana in recent years, and a corresponding rise in demand for increased opportunities.

Although there are other elements involved in this bill, the primary purpose of this legislation is the creation of an OHV program which will focus planning efforts and funding solely on OHV recreation, in order to provide needed trail maintenance, improve trail network design, and help resolve social conflicts in much the same way the snowmobile program has enhanced wintertime recreation.

As to HB 165 itself, it is our intent:

To provide for a redirection of fees, enabling the act to pay its own way administratively.

To bring the fee in lieu of tax in line with differences in value between snowmobiles and OHV's.

To provide for registration of OFF-HIGHWAY vehicle dealers.

To provide for issuing a certificate of ownership for OHV's and a viable registration system.

To provide that the program-oriented decal portion of the fees also be

paid by street-legal, licensed OHV's used on public lands. HB 165

To provide an OHV program that is paid for by the people it provides services for.

The present statute regarding OHV registration does not provide funding for administration or enforcement. Consequently, registration information is not entered into the motor vehicle recording system, and compliance rates are low.

The current fee in lieu of tax for snowmobiles is \$22/15. The market value of off-highway motorcycles and ATV's is considerably less than that of snowmobiles. Reducing the fee in lieu of tax on OHV's accordingly to \$18/8 would allow the remainder of \$'s to be redirected for administrative purposes without increasing the total cost to the involved taxpayers, and would more closely reflect that difference in the rate of taxation and value.

There is a viable history supporting the above reduction and redirection: During last session's consideration of the bill resulting in this statute, it was expressly pointed out by the Department of Fish, Wildlife and Parks, that no monies were provided for enforcement or administration. The fee amounts were then amended by an amount sufficient to cover those costs, but the appropriate language to direct administration was not included and is not a part of the existing statute. (I have provided the committee secretary with a copy of that information along with a copy of my testimony.)

Funding enforcement will increase compliance, and the increased number of "decaled" OHV's will offset the redirection of the \$'s from the counties.

We have tried to provide a fee structure that will adequately cover the costs of services rendered by the various departments, and have provided additional fees at times when added time or materials are needed in gathering initial information, such as when applying for a certificate of ownership, or affecting a transfer of interest.

In order to provide a certificate of ownership, all OHV dealers must be registered. There are some not covered by existing statutes.

Lack of a certificate of ownership and meaningfully recorded registration leaves OHV's susceptible to "hit and run" theft, hampers recovery efforts, and resale by legitimate owners.

Formulation of reasonable guidelines for OHV use and on-the-ground resource management will be enhanced when there is a forum for addressing concerns in a concerted fashion. Establishment of an OHV program provides that forum. Through a format of cooperative agreements such as the snowmobile program employs, all agencies can participate, thus expanding the fiscal outlook and management capabilities of each. The program will come FROM the users, as a direct return FOR their tax \$'s.

We recognize that such a program cannot emerge instantaneously in full force. We have therefore, have included language that will allow

EXHIBIT 2  
DATE 1-19-89  
HB 165

funding to begin accruing effective January 1, 1990, and have delayed evaluation for implementation until January 1, 1991.

We are saying to you, "Tax us as our fair share in taking care of our the resource we use," but we are also asking you to be fair and equitable in that taxation.

I have closely followed the drafting of this legislation, and am at your disposal regarding questions as to its intent and structure.

Thank you for your time in consideration of this matter. MTBRA respectfully requests that you support this bill.

*Sinda Ellison*  
*1/19/89*

HOUSE BILL NO. 813

INTRODUCED BY COHEN, GRADY, HARPER, ELLISON

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A FEE IN LIEU OF TAX FOR OFF-HIGHWAY VEHICLES; PROVIDING FOR THE DISTRIBUTION OF THE PROCEEDS FOR THE BERNHART--OP--THB--BOGAS GOVERNMENT--BOGK--GRANP--FOND; AMENDING SECTION 15-6-146, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 7 and 9], unless the context clearly indicates otherwise, the following definitions apply:

(1) (a) "Off-highway vehicle" means a self-propelled three--or--four-wheeled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadticycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) Off-highway vehicle does not include: (i) vehicles designed primarily for travel on, over, or in the water; (ii) snowmobiles; or

(iii) vehicles otherwise licensed under the law of the state. (2) "Department" means the department of fish, wildlife, and parks.

NEW SECTION. Section 2. Exemptions. (1) The provisions of [sections 1 through 7 and 9] do not apply to an off-highway vehicle:

(a) owned or used by the United States or another state or an agency or political subdivision thereof;

(b) registered in a country other than the United States, temporarily used within this state for not more than 30 days; OR

(c) registered in another state of the United States, temporarily used within this state for not more than 30 days; or (d) operated on-lands--owned--or--leased--by--the off-highway-vehicle-owner.

NEW SECTION. Section 3. Fee in lieu of tax on off-highway vehicles -- disposition of fees. (1) There is a fee in lieu of tax on off-highway vehicles to be paid to the county treasurer of the county in which the owner of the off-highway vehicle resides.

(a) The fee for an off-highway vehicle less than 3 years old is \$20. In all other cases the fee is \$17. (b) The age of an off-highway vehicle is determined by



FISCAL IMPACT:

|                                      | FY88          |               |            | FY89          |               |            |
|--------------------------------------|---------------|---------------|------------|---------------|---------------|------------|
|                                      | Current Law   | Proposed Law  | Difference | Current Law   | Proposed Law  | Difference |
| <u>Revenues:</u>                     |               |               |            |               |               |            |
| Property Tax and Fee in Lieu of Tax: |               |               |            |               |               |            |
| University Levy                      | \$ 11,983,158 | \$ 11,983,158 | \$ 0       | \$ 12,147,966 | \$ 12,147,798 | \$ ( 168)  |
| School Equalization                  | 89,873,685    | 89,873,685    | 0          | 91,109,745    | 91,108,542    | (1,203)    |
| TOTAL                                | \$101,856,843 | \$101,856,843 | \$ 0       | \$103,257,711 | \$103,256,340 | \$ (1,371) |
| Fines:                               | \$ 0          | \$ 2,250      | \$ 2,250   | \$ 0          | \$ 4,500      | \$ 4,500   |

Fund Information:

(Fines)  
 Fish, Wildlife & Parks -  
 Enforcement Safety  
 and Education

|  |      |          |          |      |          |          |
|--|------|----------|----------|------|----------|----------|
|  | \$ 0 | \$ 2,250 | \$ 2,250 | \$ 0 | \$ 4,500 | \$ 4,500 |
|--|------|----------|----------|------|----------|----------|

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Local Government Revenues

|                        | FY88       | FY89       |
|------------------------|------------|------------|
| Current Property Taxes | \$ 167,668 | \$ 175,684 |
| Proposed Fees          | 167,360    | 168,730    |
| Difference             | \$ (308)   | \$ (6,954) |

An additional \$10,601 a year will be deposited in the county general fund under the proposed law.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

An inconsistency exists in the definition of "off-highway vehicle" in Section 1. The first sentence restricts the definition to three or four-wheeled vehicles, while the second sentence states that motorcycles and air cushion vehicles are included. The definition also does not clarify whether an ATV used on private land by someone other than the landowner is required to be registered.

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB813, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:  
An act establishing a fee in lieu of tax for off-highway vehicles; providing for use of the proceeds for the benefit of the local government block grant fund; and providing effective dates.

ASSUMPTIONS:

1. The proposed fee in lieu of tax will apply to 22,500 all-terrain vehicles that currently are not registered or properly taxes paid on. (Estimates by recreational vehicle manufacturers and the motor vehicle division.)
2. One half, or 11,250, of these ATV's will register each year (excludes registered motorcycles).
3. 40% of the ATV's are less than three years old; 60% are over three years old.
4. A 4% violation rate (based on the number of snowmobile registration violations). The minimum fine will be levied. (One half the effect in FY88).
5. Distribution of fines to Fish, Wildlife and Parks for all-terrain vehicle safety and education program.
6. This bill provides no funding for enforcement of this act, therefore any Department of Fish, Wildlife and Parks enforcement will occur incidental to the accomplishment of required duties. The use of department funds for specific enforcement of this act would violate statutory spending restrictions.
7. The education and safety program would be limited to scope according to the funds available through fine collections.
8. The taxable value of the state will be \$1,997,193,000 in FY88 and \$2,024,661,000 in FY89 (REAC).
9. This proposal would become effective on January 1, 1988. Since there is no provision for prorating fees in this proposal, all ATV's not currently licensed would be subject to the proposed fee system and other ATV's removed from property tax rolls in FY88 and FY89.
10. There are 2,849 ATV's (primarily golf carts) in class 16 property that would be affected by this proposal. 30% of these ATV's are less than 3 years old; 70% are 3 years old or over.
11. The taxable value of class 16 ATV's is \$668,000 (1986 actual taxable value).
12. Local block grant distribution (less 5% to county general fund): School Foundation Program = 14.9230% in FY88 and 14.3261% in FY89; University = 1.9896% in FY88 and 1.9100% in FY89; and the remainder to other taxing jurisdictions.
13. The average state mill levy will be 302 mills in FY88 and 314 mills in FY89 for this type of property.

*David L. Hunter*  
DAVID L. HUNTER, BUDGET DIRECTOR  
Office of Budget and Program Planning  
DATE 2/24/87

*Ben Cohen*  
BEN COHEN, PRIMARY SPONSOR  
Fiscal Note for HB813, as introduced.  
DATE 2/25/87

Off-Highway Vehicles

23-2-801. (Effective January 1, 1988) Definitions. As used in this part,

unless the context clearly indicates otherwise, the following definitions apply: (1) "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

- (b) Off-highway vehicle does not include: (i) vehicles designed primarily for travel on, over, or in the water; (ii) snowmobiles; or (iii) vehicles otherwise licensed under the laws of the state. (2) "Department" means the department of fish, wildlife, and parks. History: En. Sec. 1, Ch. 578, L. 1987.

23-2-802. (Effective January 1, 1988) Exemptions. The provisions of this part do not apply to an off-highway vehicle:

- (1) owned or used by the United States or another state or an agency or political subdivision thereof; (2) registered in a country other than the United States, temporarily used within this state for not more than 30 days; or (3) registered in another state of the United States, temporarily used within this state for not more than 30 days. History: En. Sec. 2, Ch. 578, L. 1987.

23-2-803. (Effective January 1, 1988) Fee in lieu of tax on off-highway vehicles — disposition of fees. (1) There is a fee in lieu of tax on off-highway vehicles to be paid to the county treasurer of the county in which the owner of the off-highway vehicle resides.

- (a) The fee for an off-highway vehicle less than 3 years old is \$25. In all other cases the fee is \$15. (b) The age of an off-highway vehicle is determined by subtracting the manufacturer's designated model year from the current calendar year. (2) The county treasurer shall distribute all fees in lieu of tax collected on off-highway vehicles pursuant to this section in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed. History: En. Sec. 3, Ch. 578, L. 1987.

23-2-804. (Effective January 1, 1988) Decal required. Except as provided in 23-2-802, no off-highway vehicle may be operated by any person in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department, as visual proof that the fee in lieu of tax provided for in 23-2-803 has been paid for the current year. The decal will be serially numbered and have the expiration date of December 31 of the appropriate year printed thereon. History: En. Sec. 4, Ch. 578, L. 1987.

23-2-805. (Effective January 1, 1988) Identification of off-highway vehicle to which fee applies. (1) When the owner of an off-highway vehicle pays the fee in lieu of tax provided for in 23-2-803, he shall furnish the county treasurer, upon a form furnished by the department for this purpose, the following information about the off-highway vehicle:

- (a) name of the owner; (b) residence or mailing address of the owner, by town and county; (c) name of the manufacturer; (d) model number or name; and (e) identification number. (2) The application must be signed by at least one owner or by a person authorized agent of the owner.

(3) Upon payment of the fee in lieu of tax and completion of the identification form, the county treasurer shall deliver the decal provided for in 23-2-804. History: En. Sec. 5, Ch. 578, L. 1987.

23-2-806. (Effective January 1, 1988) Enforcement. The department shall enforce these provisions by its enforcement personnel, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this part. History: En. Sec. 6, Ch. 578, L. 1987.

23-2-807. (Effective January 1, 1988) Penalty — disposition. (1) Failure to display a current decal indicating that the fee in lieu of tax has been paid on the off-highway vehicle for the current year as provided in 23-2-803 is a misdemeanor punishable by a fine equal to five times the fee in lieu of tax that is due on the off-highway vehicle for the current year.

(2) All fines collected under this section must be transmitted to the county treasurer, who shall deposit the money in the earmarked revenue fund to be used for off-highway vehicle safety and education. History: En. Sec. 7, Ch. 578, L. 1987.

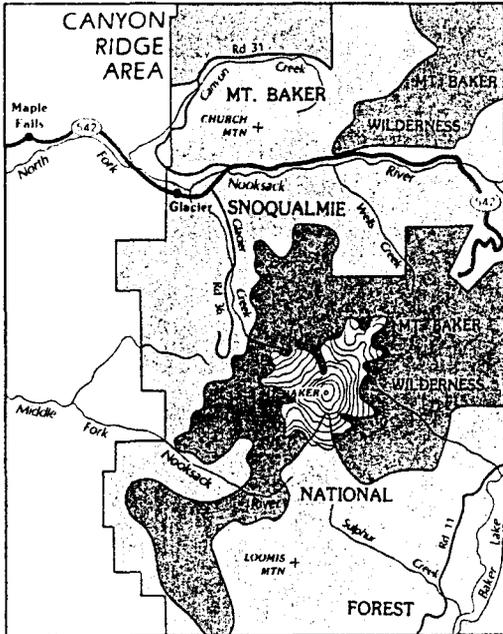
23-2-808. (Effective January 1, 1988) Regulation by local government precluded. No political subdivision may prescribe further licensing, registration of off-highway vehicles, and no political subdivision may levy taxes or charges for use or operation of off-highway vehicles within the subdivision. History: En. Sec. 9, Ch. 578, L. 1987.

HD 165

EXISTING OHV PROGRAMS IN SELECTED STATES

SUBMITTED BY MTERA 1-19-89

EXHIBIT 3  
DATE 1-19-89  
HB 165



**CANYON RIDGE**

**Location:** 4 mi. N of Glacier  
**Phone:** (206) 856-1324 USDA Forest Service or (206) 592-5161 Whatcom Co Parks

**Trails:** Trailbike **Season:** when snow-free **Fees:** none  
**Mailing Address:** Mt. Baker Ranger District, P.O. Box 232, Sedro Woolley, WA 98284 or Whatcom Co. Parks, 3373 Mt. Baker Highway, Bellingham, WA 98226 **Trail Map:** Western Washington packet **Note:** Cooperative trail system of the USDA Forest Service and Whatcom Co. Parks; trails not rated for difficulty

**PLACES TO OFF-ROAD**

Puget Sound

Canyon Ridge

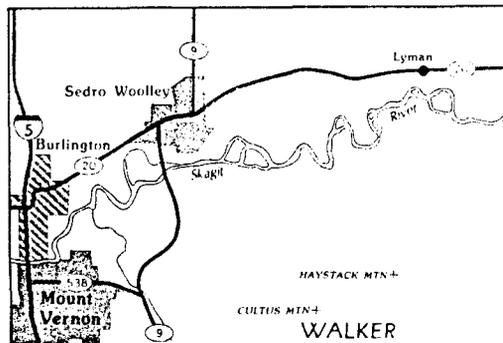
This trail loop will be a 26-mile trailbike ride. All but about eight miles of trail are in place. The loop should be completed by Fall 1985. Trail elevations range from 3,000 to 5,500 feet, and provide alpine mountain vistas.

The Canyon Creek Campground (USDA Forest Service) serves as the principal trailhead.

This project was funded with Whatcom County ORV funds and the Forest Service provided the ground.

Walker Valley

The Walker Valley area is a lowland riding area popular with trailbikers. Elevations range from 500 to 3,000 feet.



**WALKER VALLEY**

**Location:** 7 mi. SE of Mt. Vernon

**Phone:** (206) 856-0083  
**Trails:** Trailbike **Season:** daylight hours, all year, weather permitting **Fees:** none **Mailing Address:** Department of Natural Resources, 919 N. Township St., Sedro Woolley, WA 98284 **Trail Map:** not yet

EXHIBIT 4  
DATE 1-19-89  
HB 165

HB 165  
January 19, 1989

Testimony presented by Dick Johnson, Department of Fish, Wildlife & Parks.

The Department of Fish, Wildlife & Parks supports HB 165. However, because of several minor difficulties that may make the bill difficult to understand, we suggest this bill be assigned to a subcommittee to make the proper adjustments. These minor amendments do not change the intent of the bill.

The department recognizes the need to develop appropriate off-highway vehicle programs. Funding provided by this bill will allow the department to develop and implement these programs.

①

Owner "B"

EXHIBIT 5  
DATE Jan 19, 1989  
HB 149

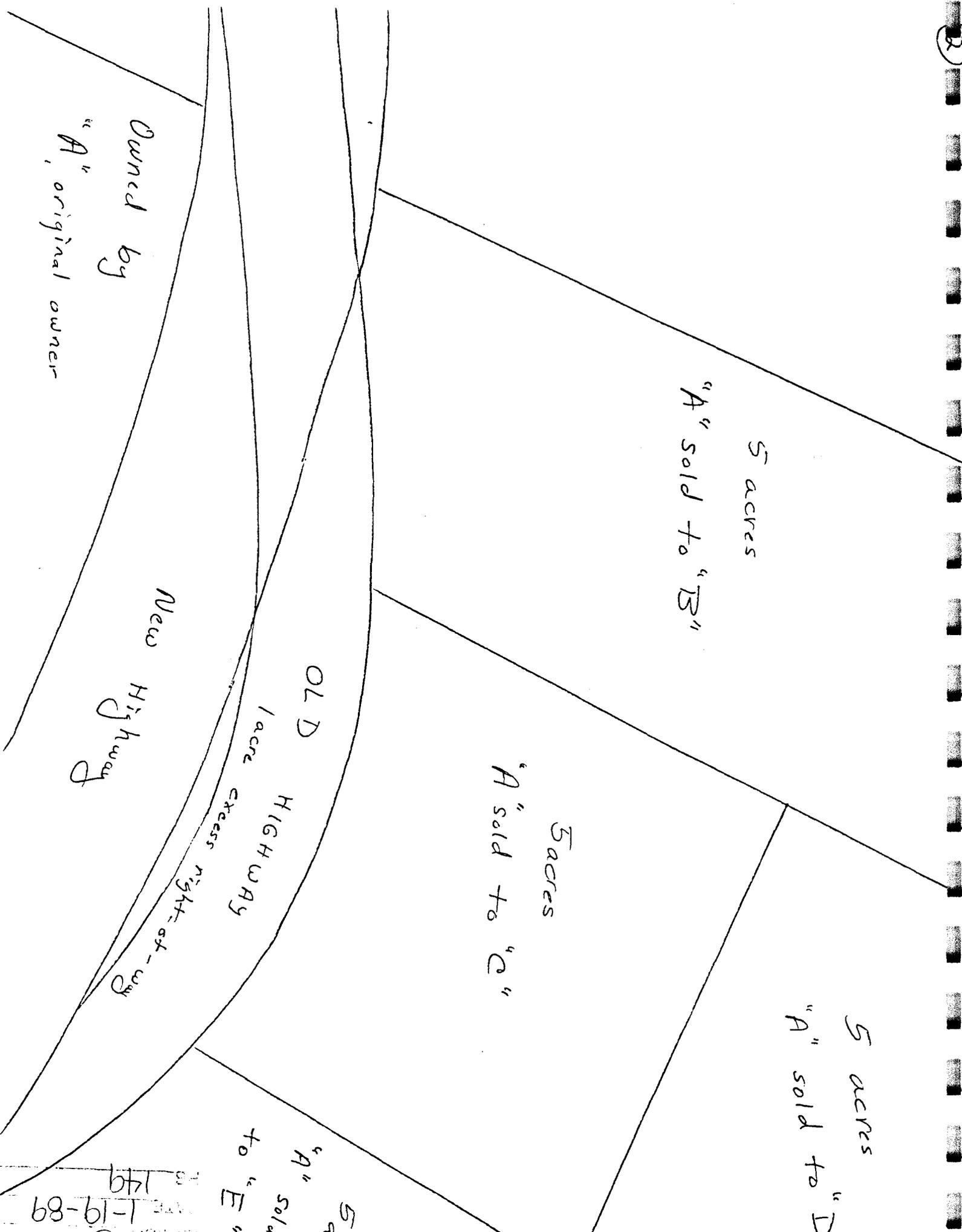
New right-of-way to be purchased

5 acre  
purchased from  
"A" (uneconomic remnant)

Existing Highway

Owner "A"

EXHIBIT 5  
DATE 1-19-89  
HB 149



Owned by  
"A", original owner

New Highway

OLD  
HIGHWAY  
1 acre excess right-of-way

5 acres  
"A" sold to "B"

5 acres  
"A" sold to "C"

5 acres  
"A" sold to "D"

5 acres  
"A" sold to "E"

1-19-89

*Beate Gulda*

12/11/88 5  
DATE 1-19-89  
12 149

Successor in Interest Option

Background:

Since 1959, Montana law has provided an option for the original owner or his successor in interest to require the Department to sell land at public auction rather than exchange it for other land and an option to match the high bid if property is offered for sale by the Department. Since 1959 the Department estimates that less than ten former owners or their successors in interest have exercised their option to meet the high bid and purchase the property. During that period the Department estimates that it has sold 350 parcels of land. The Department sells or trades an average of 10 to 15 parcels per year.

The Department does not have legal authority to purchase more land than it needs unless the excess land is an uneconomic remainder. During negotiations with nearby landowners the Department is sometimes able to exchange the excess land for other land it needs for a highway project. This land is normally not useful to the original owner since it is too small to use by itself or it is isolated from the rest of his property. In a recent situation in the Billings area, a condemnation action was almost settled by an exchange of land but the previous owners, one of whom had moved out of state and the other had moved away from Billings, blocked the exchange because they disliked the condemnee and didn't want him to have the land. They were not interested in purchasing the remainder.

Where excess land was purchased during an earlier project, it is often impossible to determine who the successor in interest is. In several situations encountered by the Department, the original owner had subdivided his property and it was impossible to determine who had the right to exercise the option. The Department has been involved in two lawsuits concerning the determination of the successor in interest. In one case the original owner had deeded her land to one party but later deeded her option under the statute to another party. Both wanted to

SENATE 5  
DATE 1-19-89  
HB 49

exercise the option. This case went to the Montana Supreme Court for final determination. In two other situations the original owner had merely deeded the option to be the successor in interest to a party who wanted the right to meet the high bid without the risk of making a bid.

The statutory option normally merely results in delay while the Department attempts to determine the successor in interest, to contact him, and to wait for his response. Most original owners or their successors in interest are not interested in repurchasing a piece of property which was too small to be worth retaining at the time of the original purchase for highway purposes. The statutes also prohibit the Department from combining several small parcels where each was under different ownership. This results in lower prices for the sale because of increased advertising and separate appraisals and often results in lower prices for the land or the inability to sell the small parcels.

What the Proposed Bill Does:

This bill will allow the Department of Highways to exchange land without first contacting the original owner or his successor in interest. The original owner will be given at least ten days notice of sale and will still have the right to make a bid at public auction if he is interested in repurchasing excess land acquired by the Department. This bill will, however, eliminate his option and that of any successor in interest and will eliminate the attendant problems and litigation necessary to determine who may exercise that option.

Department Position:

The Department of Highways believes that this bill will eliminate a seldom used but time consuming privilege and therefore supports this bill.

*Bente Jalla*

EXHIBIT 6  
DATE 1-19-89  
HB 164

HIGHWAYS AND TRANSPORTATION COMMITTEE

BARRY "SPOOK" STANG CHAIRMAN

Mr. Chairman, Members of the Committee. For the record my name is Representative Robert Clark from H.D. 31.

I come before you today to ask your support of H. 164. This is a bill being requested by the Department of Justice that would amend Section 61-9-405, MCA, thereby making the law more enforceable. The current wording "which obstructs", could be construed to mean a total blockage of view, while the new language means any obstruction that hinders a drivers clear view of the highway or any intersecting highway. I ask your support in passing this bill through committee. Thank you.

VISITORS' REGISTER

Highways and Transportation COMMITTEE

BILL NO. 149, 158, 164, 165

DATE January 19, 1989

SPONSOR

| NAME (please print) | RESIDENCE  | SUPPORT | OPPOSE  |
|---------------------|--|---------|---------|
| Linda Ellison       | Bozeman  | 165     |         |
| Larry G Ellison     | Bozeman  | 165     |         |
| ROBERT LEE          | Bozeman  | 165     |         |
| Ben Haudahl         | Helena   | 158     |         |
| Eric Rabe           | Great Falls  | 165     |         |
| Kerry Jack          | Representing Mt Stockgrowers<br>Mt. Park<br>Ass. of State Growers<br>DISTRICTS<br>Helena - Mt Stockgrowers | 149     | ✓       |
| Russ Ehnes          | GT FALLS. MT   | 165     |         |
| Alon Ehnes          | Gr. Falls mt.  | 165     |         |
| DAVID COLE          | BOZEMAN  | 165     |         |
| Eric Ehnes          | Gr Falls MT.   | 165     |         |
| Jean Sh...          | Dept of Highways   | 158     | Neutral |
| Margaret Ehnes      | Gr. Falls Mt.  | 165     |         |
| Beate J...          | Dept of Highways   | 149     |         |
| Kamona Ehnes        | Great Falls MT   | 165     |         |
| Dorey H...          | Club Board   | 165     |         |
| Dick Johnson        | Dept F W P   | 165     |         |
| Tom Rabe            | Great Falls  | 165     |         |
| Patricia White      | Helena   | 165     |         |
| Dennis Miller       | Mont. City   | 165     |         |

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



ROLL CALL VOTE

Highways and Transportation

CO'MITTEE

DATE January 19, 1989 BILL NO. HB 131

NUMBER \_\_\_\_\_

| NAME                          | AYE | NAY |
|-------------------------------|-----|-----|
|                               |     |     |
|                               |     |     |
|                               |     |     |
| Rep. Bachini, Bob             | ✓   |     |
| Rep. Davis, Ervin             | ✓   |     |
| Rep. Harrington, Dan          | ✓   |     |
| Rep. O'Connell, Helen         | ✓   |     |
| Rep. Stepler, Don             |     | ✓   |
| Rep. Westlake, Vernon         | ✓   |     |
| Rep. Aafedt, Ole              | ✓   |     |
| Rep. Campbell, Bud            | ✓   |     |
| Rep. Clark, Robert            | ✓   |     |
| Rep. Owens, Lum               | ✓   |     |
| Rep. Patterson, John          |     | ✓   |
| Rep. Roth, Rande              | ✓   |     |
| Rep. Zook, Tom                |     | ✓   |
| Chairman Stang, Barry "Spook" | ✓   |     |
| Vice Chairman Linda Nelson    |     | ✓   |
|                               |     |     |
|                               |     |     |
|                               |     |     |
|                               |     |     |

TALLY

11

4

*Louise Johnson*  
Secretary

*Barry Stang*  
Chairman

MOTION: Was made by Rep. Bachini for a DO NOT PASS,  
question was called, all committee members for a DO NOT PASS  
with the exception of Rep. Stepler, Rep. Nelson, Rep. Zook,  
and Rep. Patterson voting against on an absentee ballot.